

## PLAINTIFFS' EXHIBIT 10

Memorandum

To: Scott Michael Moore, Moore International Law, PLLC

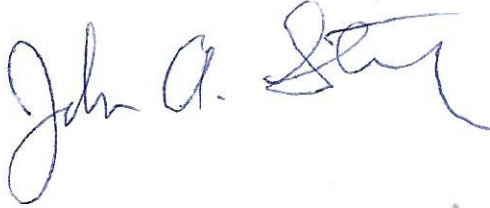
From: John A. Strong, professor emeritus Long Island University.

Re: Shinnecock rights to the bounty of their maritime ecosystem

May 27, 2018

[johnastrong2@gmail.com](mailto:johnastrong2@gmail.com)

mobile phone: 631-365-9045

A handwritten signature in blue ink, appearing to read "John A. Strong", is written over the contact information.

The Shinnecock Nation and other coastal Algonquian peoples on Long Island have depended from time immemorial on the bounty from their maritime environment. The English acknowledged this relationship in a series of nation to nation agreements beginning in the spring of 1648 when Nowedonah, the Shinnecock sachem, joined with the sachems from the Montauketts, Manhassetts, and Corchaugs to negotiate with the governors of New Haven and Connecticut for the purchase of thirty thousand acres of land in what is now the town of East Hampton (RTEH 1: 2-3). The sachems retained the "...liberty, freely to fish in any or all of the cricks and ponds and to hunt up and down on the woods without molestation...likewise they are to have the tails and fins of allsuch whales as shall be cast up... Allsoe they reserve the liberty to fish in all convenient places, for shells to make wampum. Allsoe, if the Indians, hunting any deere, they should chase them into the water, and the English should kill them, the English shall have the body and the sachem the skin." (The fins and tails were sacrificed to the spirits of the deep water in a ceremony described by David Gardiner in his *Chronicles of East Hampton* 1871, 3).

On June 10, 1658 Sachem Wyandanch met with Lion Gardiner, one of the first English settlers on Long Island, to negotiate a nation to nation agreement concerning access to beaches adjacent to the Shinnecock lands in Southampton. In the negotiations Sachem Wyandanch agreed to grant Gardiner access to beach meadows for livestock grazing but refused to allow the English access to the bodies of drift whales, a lucrative source of whale oil. He stated that his claim to the bodies of the whales was based on an ancient tradition. "...the whales that

shall be cast upon this beach, “he insisted,” shall belong to me and the rest of the Indians in their bounds as they have been anciently granted to them formerly by my forefathers...”(RTEH 1: 170-171). Gardiner accepted those terms.

A year later on May 12<sup>th</sup> Wyandanch and his son, Wyancombone, sold a tract of beach land west of the Shinnecock Canal to John Ogden with the stipulation that the Shinnecock retain “our privileges of fishing and fowling, hunting or gathering of berries or any other thing for our use...”(RTSH 1: 162; 2: 354-55). On June 8<sup>th</sup>, a month after the sale to Ogden, Wyandanch sold another tract of beach meadows to Lion Gardiner, again “reserving to ourselves and the Indians all the fins and tails...” (DSBD 2: 85-86).

Three years later, in 1662, this tradition of reserved rights to products from the coastal waters was reaffirmed by Weany, the Shinnecock sunksquaw when she sold a tract of land to Thomas Topping of Southampton. The Shinnecock retained half of the profits and benefits from the drift whales and, “all the herbage or feed growing thereon” (RTSH 1: 167-68).

The above agreements were made while the towns of Southampton, East Hampton and Brookhaven were under the jurisdiction of Connecticut colony. The issue of Native American fishing rights was addressed again after the establishment of the colony of New York in 1664. Questions about Indian access to drift whales came before Governor Edmund Andros in January 1675.

The governor ruled that Indians who discover the bodies of drift whales on their beaches “...shall have such reasonable satisfaction as hath been usual” (NYCD 14: 686). Andros ordered his secretary of state, Mattias Nicolls, to invite “the sachems on the south side of Long Island” to consult with him. These negotiations, unfortunately, were interrupted by King Philip’s War in New England (1675-76). There were rumors that some Long Island Indians might give support to Philip. Andros declared a war alert and ordered the Long Island nations to disarm (NYCD 14: 692, 695).

In May 1676, as the tide turned against King Philip, a delegation from the Unkechaug, a closely related neighbor to the Shinnecock on the west, met with Andros to restore peacetime relations. They presented him with a gift of wampum, but then voiced a complaint (NYCD 14: 718). The Unkechaug complained that some English settlers had taken fish away from them on their beaches. Their representatives identified themselves as ...”being free borne on Long Island,” they told the governor that they wanted the freedom, “...to fish and dispose of what

they shall take in to whom they like best” (NYCD 14: 720). After consideration the governor’s council ruled that the Indians were “...at liberty and may freely whale and fish ... and dispose of their effects as they think good...” The local magistrates were ordered to “take notice and suffer the said Indians so to doe without any manner of lett hindrance or molestation they comporting themselves civilly as they ought” (Ibid.) The council’s action made it clear that the colony of New York continued to recognize the fishing rights established by the first English settlers in 1648.

## Conclusion

The above documents clearly support the rights of the Shinnecock and the other native peoples of eastern Long Island to fish in the waters adjacent to their communities “without let or hindrance” and to dispose of their catches, “as they think good”

## SOURCES

DSBD=Department of State Book of Deeds, Unpublished documents, Office of the Secretary of State, Albany, New York (New York State Archives. Series 453, vols. 1-9)

Gardiner, David Lion, 1873 [1840] *Chronicles of East Hampton*, Sag Harbor, N.Y.: Isabel Gardiner Mairs.

NYCD=*Documents Relative to the Colonial History of the State of New York*, ed. Edmund Bailey O’Callaghan and Berthold Fernow. 15 vols. Albany, N.Y.: Weed, Parsons, 1856-87.

RTEH=*Records of the Town of East Hampton*, ed. Joseph Osborne, 5 vols. Sag Harbor, N.Y. 1887.

RTSH=*Records of the Town of Southampton*, ed. William Pelletreau. 8 vols. Sag Harbor, N.Y. 1874-77.

Dr. John A. Strong, Professor Emeritus History and American Studies, Long Island University, Southampton Campus, Southampton, NY.

Education: B.A. St. Lawrence University, 1957, M.A. Syracuse University, 1959, and Ph.D. Syracuse University, 1967.

Selected publications include:

#### BOOKS

"We are Still Here!" The Algonquian Peoples of Long Island Today, Interlakin, NY: Heart of the Lakes Press (Long Island Studies Institute, Hofstra University), 1996. (Second Edition 1998)

Algonquian Peoples of Long Island from Earliest Times to 1700, Interlakin, NY: Heart of the Lakes Press (Long Island Studies, Institute, Hofstra University) 1997.

The Montaukett Indians of Eastern Long Island, Syracuse University Press, 2001.

#### ARTICLES

"The Evolution of Shinnecock Culture", "How the Land Was Lost: A Documentary History" and "Sharecropping the Sea: Shinnecock Whalers in the 17th Century", in Gaynell Stone (ed). The Shinnecock Indians: A culture History, Ginn and Co.: 1983.

"The Mississippian Bird-Man Motif in Cross Cultural Perspective", in Patricia Galloway (ed). The Southeastern Ceremonial Complex: Artifacts and Analysis, University of Nebraska Press, Lincoln and London, 1989.

"Who Says The Montauk Are Extinct? Judge Abel Blackmar's decision in Wyandank Pharaoh V. Benson (1909), American Indian Culture and Research Journal, March, 1992.

"The Thirteen Tribes of Long Island: the history of a myth", Hudson Valley Review Vol. 9, No. 2, September, 1992: 39-73.

"How The Montauk Lost Their Land", "Azariah Horton: Missionary to The Montauk", and "Montauk Prehistory," in Gaynell Stone, Ed., History and Archaeology of the Montauk, Stony Brook: Suffolk County Archaeological Association, 1993.

"The Imposition of Colonial Jurisdiction over the Montauk Indians." Ethnohistory. Fall. 1994.

"Wyandanch, Sachem of the Montauk." In Northeastern Indian Lives, ed., Robert Grumet, p.48-73, Amherst, MA: University of Massachusetts Press, 1996.

"The Montauk Indians", and "Samson Occom". In The Encyclopedia For the American Indian, Boston: Houghton Mifflin. 1996.

#### SELECTED PAPERS PRESENTED AT CONFERENCES

"The Words of the Prophets: The Sioux Ghost Dance and the Maji Uprising", African Studies Association Annual Meeting, Syracuse 1973.

"Toward a Historical Perspective of the Mississippian State System in Pre-Columbian North America," American Society for Ethnohistory, Chicago 1977.

"Bands, Tribes, Chiefdoms, and States in Pre-historic North America", Duquesne History Forum, Pittsburgh 1979.

"Orient Mortuary Ceremonialism: A Cross Cultural Interpretation," New York State Archaeological Association Annual Meeting, April 1984, (Kingston, NY).

- "The Evolution of Tribal Shrines into Hopewell Ceremonial Centers," Midwest Archaeological Conference, Northwestern University, October 1984.
- "Colonial Jurisdiction Over Native Americans in The Seventeenth Century: the alleged rape of Mary Miller by Nangenutch" American Historical Association Annual Meeting December 28, 1992, Washington D.C.
- "Cultural Revitalization in Eastern North American Native American Tribes: The Shinnecock of eastern Long Island." Laboratoire d'Anthropologie Sociale, College de France, Paris, June 4-9, 1993.
- "Detribalization by the Courts "The Montaukett (1910) and the Mashpee (1978) Cases Compared." International Congress of Americanists, Stockholm, Sweden, July 5-9, 1994.
- "Native American Whalers: The New Elite in Seventeenth Century Algonquian Society on Long Island". Conference on Race, Ethnicity and Power in Maritime American, Mystic Seaport, Sept. 14-16, 1995.
- "Tis better to kill such byrds in the egg: Rumors of Indian Conspiracies on Long Island in the 17th Century" 28th Algonquian Conference, University of Toronto, Toronto Canada, October 24-27, 1996.
- "Native Americans or Racial Degenerates? The Question of Montaukett Indian Identity," Collegium For African American Research, Cagliari, Sardinia, Italy March 21-25, 2001
- "Indians of the School of Nature or the School of Heckewelder? An Examination of Cooper's Primary Source for *The Last of the Mohicans*. British and American Studies Conference, University of Timisoara, Romania, May 17-19, 2001.
- "Empowerment and Ethnic Relations: A Comparative Study of Hungarian Roma and African Americans in Selected Rural Communities," (with Serto-Radics, Torok, Lengyel, Mills and Flautt) Gypsy Lore Conference, Hungarian Academy of Science, Budapest, Hungary, September, 5-6, 2002.